of abating a nuisance compel a land owner on whose land the nuisance exists to make his property conform to some previously conceived system of public improvement; *Eckhardt* v. *City of Buffalo,* 19 App. Div. I, 46 N. Y. Supp. 204; *In re Jacobs,* 98 N. Y. 98, 50 Am. Rep. 636. The principal case is complicated by the fact that the evidence seemed to show that the nuisance was aggravated by the granting of a railroad franchise by the city itself, the railroad embankments causing an increased impediment to the escape of tidal waters. The following cases are authority for the proposition that a city aiding or creating a nuisance may not cause it to be abated at the expense of the owner: *Hannibal* v. *Richards,* 82 Mo. 330; *Lasbury* v. *McCague,* 56 Neb. 220, 76 N. W. 862. This would seem to be a reasonable and equitable view of the matter but see *Davidson* v. *Boston & Maine R. R. Co.,* 3 Cush. 91. Questions of this nature must of necessity vary greatly and each is generally decided according to the individual circumstances of the case. The weight of authority in this country is with the majority opinion in the principal case.

NEGLIGENCE—CARE REQUIRED—LICENSEES.—Plaintiff brought an action of tort to recover for the death of his son by the fall of a derrick in defendant's quarry where he had been delivering and selling newspapers. It appeared that the boy entered the quarry by permission to sell his papers, that he had one or two regular customers in the quarry, to deliver to whom it was not necessary for him to travel the path whereon the accident occurred, and that he sold to other workmen on the quarry. *Held,* that the boy was only a licensee and that a company operating a stone quarry owes no duty to a mere licensee passing through the quarry to keep its derrick safe so that the licensee may not be injured by its accidental fall. *Norris* v. *Hugh Nawn Contracting Co.* (1910), — Mass. —, 91 N. E. 886.

The rule is well settled that where one uses private property by bare permission, he must use it as he finds it and the owner is held to no greater degree of care than to abstain from willful or affirmative negligence. *Louisville etc. R. Co.* v. *Sides,* 129 Ala. 399; *Seward* v. *Draper,* 112 Ga. 673; *Dixon* v. *Swift,* 98 Me. 207; *Smith* v. *Day,* 100 Fed. 244; *Birch* v. *City of New York,* 190 N. Y. 397. Plaintiff contended, however, that his intestate was not a mere licensee but was there by invitation. A licensee has been defined to be "a person who is neither a passenger, servant nor trespasser, and not standing in any contractual relation with the owner of the premises, and is permitted to come upon the premises for his own interest, convenience or gratification." *Northwestern El. R. Co.* v. *O'Mally,* 107 Ill. App. 599. The Massachusetts court in *Plummer* v. *Dill,* 156 Mass. 426, laid down the following rule: "To come under an implied invitation, as distinguished from a mere license, the visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on there." The same test was applied in the cases of *Dixon* v. *Swift,* supra; *Muench* v. *Heineman,* 119 Wis. 441; and *Ill. Cent. R. R. Co.* v. *Hopkins,* 200 Ill. 122; and in *Hobbs, Admr.* v. *Blanchard & Sons Co.,* 74 N. H. 116, 65 Atl. 382, the court held that an invitation by servants of a lumber company to

visit a camp is not, in a legal sense, the invitation of the company. The decision in the principal case seems to be supported by the authorities as well as by reason.

PUBLIC OFFICERS—DE FACTO OFFICER—WHAT CONSTITUTES.—Plaintiff filed a bill in equity to enjoin county officials from paying L., for services rendered as special state's attorney appointed by the court for the purpose of prosecuting primary election frauds. *Held,* L was entitled to his salary, *Lavin* v. *Board of Commissioners of Cook County et al.* (1910), — Ill. —, 92 N. E. 291.

Though the judges were unanimous in holding that L was entitled to his salary, they did not agree as to the character of his position, a majority of the court holding L to be at least a de facto officer (*State* v. *Messervy,* — S. C. —, 68 S. E. 766; *State* v. *Carroll,* 38 Conn. 449; while the three dissenting judges were of opinion that he was a mere employee or agent. The minority opinion seemed to be based on the constitutional definition of an officer and employee. Const. Art. 5, § 24: *Bunn* v. *People,* 45 Ill. 397. In the opinion of the writer L would seem to be a de jure officer: *State* v. *Staton,* 73 N. C. 546, 21 Am. Rep. 479; because all the circumstances provided for in the statute under which he was appointed were present. Therefore the sounder view would seem to be that of the majority of the court.

TELEGRAPH COMPANIES — STATUS OF A TELEGRAPH COMPANY BETWEEN SENDER AND SENDEE OF A TELEGRAM.—S & S sent a telegram to C. L. S. & C. Co., offering a lot of steers at $3.95 per cwt. The telegraph company erred in the transmission of the message and made the quotation read $3.25 per cwt. C. L. S. & Co. wired their acceptance and the steers were shipped, but they refused to pay more than at the rate of $3.25 per hundred pounds. S. & S. sued the telegraph company for the loss caused by D's mistake. *Held,* the telegraph company is not the agent of the sender of the telegram, and the sender is not liable to the receiver of the message by the terms, as negligently altered by the transmitting company. *Strong et al.* v. *W. U. Telegraph Co.* (1910), — Idaho —, 109 Pac. 910.

The law concerning telegraph companies is still in course of formation, and the rule set forth in the principal case follows that laid down in the early English and Scotch cases. The fact that the telegraph lines in these countries are owned and operated by the government and that the government is not liable for the negligence of one of its servants, led the English and Scotch courts to refuse the agency doctrine. *Henkel* v. *Pape,* L. R. 6 Exch. 7; *Verdin* v. *Robertson,* 10 Sess. Cas. (3rd. Series) 35. However, the American cases holding to the view of non-agency, declare that no control exists over the telegraph company by the sender, and that it acts as an independent party in serving the public, having authority only to transmit the message as given to it, of which fact the sendee is supposed to have notice, and that no liability can be imposed by an altered message. *Pepper* v. *W. U. Telegraph Co.,* 87 Tenn. 554; *Postal Teleg. Co.* v. *Schaefer,* 110 Ky. 907; *Pegram* v. *W. U. Teleg. Co.,* 100 N. C. 28; *Shingleur* v. *W. U. Teleg. Co.,* 72 Miss.